In the Supreme Court of the United States

OCTOBER TERM, 1962

No. 174

ERNA CHRISTIANI-ONKEN a/k/a ERNA CHRISTIANI,
Petitioner

v.

ROBERT F. KENNEDY, Attorney General and as Successor to the Alien Property Custodian

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINION BELOW

The findings of fact and conclusions of law of the district court (J.A. 27-33)[1] are unreported. The opinion of the Court of Appeals for the District of Columbia (Pet. App. A, pp. A-1-A-3) is reported at 301 F. 2d 546.

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[1] J.A. refers to the joint appendix prepared for the Court of Appeals and filed with this Court.

JURISDICTION

The judgment of the Court of Appeals was entered on March 15, 1962. The petition for a writ of certiorari was filed on June 12, 1962. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether a German citizen who resided in Germany during the period from December 7, 1941 until April, 1946, and admittedly was at that time an enemy under Section 2(a) of the Trading With the Enemy Act, was precluded from maintaining an action under Section 9(a) of the Act for the return of property which the claimant owned while she resided in Germany and which was vested by the United States in 1951, at which time she was living in Switzerland.

STATUTE INVOLVED

The pertinent provisions of the Trading With The Enemy Act, 40 Stat. 411, as amended, 50 U.S.C. App. 1, *et seq.*, are set forth in Appendix E to the petition.

STATEMENT

This suit was brought by petitioner under Section 9(a) of the Trading With The Enemy Act to recover certain property vested by the United States under vesting orders issued in 1951. The property consists of (1) cash and securities held by the Swiss American Corp. in N.Y. in a number account for the Credit Suisse, a Swiss bank, and (2) a bank account held in the Guaranty Trust Co. of N.Y. under the name of a Mr. Franz Onken, deceased, c/o Credit Suisse, Lausanne, Switzerland.

Petitioner was German at birth, later acquired Swiss citizenship, and in 1931, reacquired German citizenship when she married a German national (J.A. 21). She resided in Germany from 1931 until April 1946 (J.A. 21, 51). Her husband managed or had an interest in a correspondence school in Germany (J.A. 70, 71, 72, 76). He joined the Nazi Party and, after the war, was "denazified" (J.A. 118, 147-148). In April 1946, she received permission from the occupation authorities and the Swiss Government to make a temporary visit to Switzerland on condition that she engage in no gainful employment and that she return to Germany at the end of four months (J.A. 22, 74-75, 78, 79). She obtained several extensions of her visitor's visa. At the time of the vesting orders in 1951, she was living in Switzerland pursuant to such an extension (J.A. 22). In 1956, she obtained permission to reside permanently in Switzerland (J.A. 79). In 1958 she became a Swiss citizen (J.A. 22). Her father, Franz Onken, had died in Switzerland in 1942 (J.A. 86). The property in issue is claimed by petitioner as her inheritance from the estate of her father.

The trial court ruled that the petitioner, by leaving Germany in 1946, had terminated her enemy status and that, since she was living in Switzerland at the time of the vesting orders, she was eligible to sue under Section 9(a) for the recovery of vested property.

The Court of Appeals reversed and remanded with directions to dismiss the complaint for lack of jurisdiction. It held that the enemy status of the claimant did not terminate when she left Germany for Switzerland but continued to the time of the vesting orders.

thus precluding suit under Section 9(a). The court relied upon its previous ruling in *N.V. Handelsbureau La Mola* v. *Kennedy*, 299 F. 2d 923 (C.A.D.C.), certiorari denied, June 25, 1962, No. 907, October Term, 1961, holding that enemy status acquired during the war as a result of German military occupation of the Netherlands did not terminate when the German occupation ended.

ARGUMENT

Petitioner does not deny that the property interests claimed in this action could have been vested between 1942 (when she acquired the property by inheritance) and 1946 (when she departed from Germany) and that, if this had occurred, she would have had no right of recovery. It is her view, however, that the property is beyond the reach of the Trading with the Enemy vesting program because her departure from Germany antedated the issuance of the Custodian's vesting orders (albeit the property had been "frozen" under this country's foreign funds control program from the very day the petitioner first acquired her interest therein).

The issue thus raised is identical in all respects, as petitioner agrees (Pet. 5), with the issue presented in *Rommel* v. *Kennedy*, argued and decided together with this case and now pending on petition for a writ of certiorari (No. 165). In our brief in opposition in No. 165, we have set forth our reasons for believing that one in petitioner's position could not shed her enemy status by departing from Germany and that her property, frozen in the United States, remained subject to the same disabilities as other enemy property.

As we there argue, the result reached by the court below is clearly correct and in accord with settled principles.[2]

CONCLUSION

For the reasons more fully stated in the companion *Rommel* case (No. 165), the petition for a writ of certiorari should be denied.

Respectfully submitted,

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JOSEPH D. GUILFOYLE,
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JULY 1962.

[2] Since the Court of Appeals ruled that enemy status admittedly acquired by residence in enemy territory during the war was not lost by removal to neutral territory, there was no need to consider the further claims of the government that (1) the undisputed facts show that the petitioner retained her "residence" in Germany until 1956, when she was granted permission to reside permanently in Switzerland, and (2) the claimant failed to prove legal or beneficial ownership of the property claimed. If certiorari should be granted, the government reserves the right to urge these additional alternative grounds in support of the judgment below.

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